

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DAVID B. MITCHELL,

Plaintiff,

v.

CHRISTIE VICK et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No. CIV-18-234-G

ORDER

Now before the Court is Plaintiff David B. Mitchell's Motion for Voluntary Dismissal (Doc. No. 36), in which Plaintiff requests that the Court dismiss the action with prejudice. *See* Pl.'s Mot. at 1.


Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Under this Rule, "a plaintiff has an absolute right to dismiss without prejudice and no action is required on the part of the court." *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). Because no opposing party has served either an answer or a motion for summary judgment in this action, the Court construes Plaintiff's Motion as a notice of voluntary dismissal under Rule 41(a)(1)(A)(i). *See Deutsch v. Gallegos*, 98 F. App'x 723, 724-25 (10th Cir. 2004).

Federal Rule of Civil Procedure 41(a)(1)(B) provides that a Rule 41(a)(1)(A) voluntary dismissal is without prejudice "[u]nless the notice . . . states otherwise." Fed. R.

Civ. P. 41(a)(1)(B). Here, Plaintiff states that he seeks dismissal “with prejudice to refile[ing].” Pl.’s Mot. at 1. Dismissal of the action with prejudice to refiling is, therefore, required. *See Schmier v. McDonsald’s LLC*, 569 F.3d 1240, 1242 (10th Cir. 2009). Plaintiff’s voluntary dismissal with prejudice “operates as a final adjudication on the merits, and is thus a final judgment.” *Id.* (citations and internal quotation marks omitted).

ACCORDINGLY, Plaintiff’s Motion for Voluntary Dismissal (Doc. No. 36), filed on October 12, 2018, is deemed a notice of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). The above-captioned action is DISMISSED with prejudice to refiling, effective as of October 12, 2018. *See* Fed. R. Civ. P. 41(a)(1)(A), (B); Pl.’s Mot. at 1.

IT IS SO ORDERED this 16th day of October, 2018.



CHARLES B. GOODWIN
United States District Judge